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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES,

15 Plaintiff;

16 vs.

17 JAQUAIN YOUNG,

18 Defendant.

Case No.: CR-13-00764 WHO

DEFENDANT JAQUAIN YOUNG'S REPLY IN
SUPPORT OF MOTION *IN LIMINE* REGARDING
JAILHOUSE RECORDING EXCERPTS THE
GOVERNMENT INTENDS TO USE AT TRIAL

Hon. William H. Orrick
November 9, 2016 at 9:00 a.m.

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1 charged offenses,” it may “still be ‘highly incriminating as to the pending charges.’”
2 Order (Dkt. No. 895) at 12:2-6 (“All that matters is that the statements [are] incriminating
3 as to the pending charges; it does not matter how” (*citing United States v. Bender*, 221
4 F.3d 265, 267 (1st Cir. 2000)). But, seemingly seeking a reconsideration of the Court’s
5 earlier order, the government now argues that this Court should admit into evidence
6 seven statements that reference pimping. Gov’t Opp. (Dkt. No. 1076) at 6:4-8:7.

7 Consistent with its prior order, this Court should exclude each of these
8 statements, of which a discussion of each follows:

9 • **Statement 3 (Government Excerpts (Dkt. No. 959-3) at 3:18-5:9)**

10 The government wants to admit Statement 3, including specifically, “[T]he weed
11 guy [another inmate] has never seen Young with a group of bitches.” Opp. (Dkt. No.
12 1076) at 6:4-13. In support, the government makes a new argument that contradicts
13 arguments it previously made to this Court. In its prior filings describing these same
14 statements, the government proclaimed that “bitches” is code word for “prostitutes” and
15 thus referenced Mr. Young’s role as a pimp. See Govt. Opp (Dkt No. 738) at 10:11-12
16 (“[T]he defendant repeatedly volunteer[s] information about his other prostitutes, whom
17 he call[s] his ‘bitches.’”). Now that the Court has ruled that any statements about
18 pimping be suppressed, the government reverses field and claims that statement
19 “bitches” doesn’t necessarily refer to prostitutes, and even if it does, the statement is not
20 incriminating and thus is admissible. Opp. (Dkt. No. 1076) at 5:19-6:3.

21 The Court should reject the government’s attempts to reinterpret the term
22 “bitches” in order to circumvent this Court’s prior order. As the government’s own
23 arguments demonstrate, a jury could interpret discussions of Mr. Young and “a group of
24 bitches” as an admission that Mr. Young works with prostitutes. Further, the fact that
25 Mr. Young is stating that an individual has not, in fact, “seen Mr. Young with a group of
26 bitches” does not make it any less incriminating. The jury may infer from his statements
27

1 that it was only through luck or happenstance that this one individual did not see Mr.
2 Young in the situation described.

3 At bottom, this Court ruled that statements that reference pimping are
4 inadmissible. By the government's own definition, Statement 3 refers to pimping. The
5 statement should be excluded.

6
7 • **Statement 4 (Government Excerpts (Dkt. No. 959-3) at 5:10-6:18):**

8 The government concedes that Statement 4 includes a discussion of "pimping
9 and pandering," yet seeks to exempt it from the Court's order on the grounds that Mr.
10 Young was not describing himself engaging in pimping. Opp. (Dkt. No. 1076) at 6:14-
11 22. Simply put, this Court should exclude the statement, because it references pimping.

12
13 • **Statement 9 (Government Excerpts (Dkt. No. 959-3) at 10:3-17:25):**

14 The government concedes that this excerpt discusses whether Mr. Young's "live
15 in girlfriend, Taylor Norry" was "'hoing' at the time," but it claims that such a statement is
16 not incriminating with respect to the pimping charges. Opp. (Dkt. No. 1076) at 6:23-26.
17 The government's argument is belied by its own repeated characterizations of Ms. Norry
18 as a prostitute for Mr. Young. See Dkt. No. 738 at 10:2-4 and 18:22 (describing Mr.
19 Young's girlfriend as his "prostitute"). Because this statement specifically references
20 prostitution (aka "hoing") it should be suppressed under the Court's order.

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24 • **Statement 10 (Government Excerpts (Dkt. No. 959-3) at 18:8-20:21):**

25 The government concedes that one could interpret this excerpt as relating to
26 pimping and offers to redact the sentence, "One of my girls, like she was getting 20 by
27 herself." Opp. (Dkt. No. 1076) at 7:1-3. But redacting one sentence does not exempt

1 the entirety of this statement from the Court's order. The statement contains additional
2 references that relate to pimping (e.g., "two bitches in the club getting money"). This
3 Court should exclude the entire excerpt.

4 • **Statement 11 (Government Excerpts (Dkt. No. 959-3) 21:14-34:26):**

5 This excerpt discusses evidence the government missed when the police
6 arrested Mr. Young for the pimping charges. Amongst other things, Mr. Young says,
7 "When they caught me right now [referring to the arrest leading to his incarceration on
8 June 18, 2014], I had a gun in the car." Mr. Young goes on to state that the government
9 failed to locate the gun in question. This statement is incriminating with respect to the
10 pimping charges because it would lead a juror to believe Mr. Young had a gun on him
11 when he was arrested for the pimping charges, thus making it more likely that a jury
12 would find that he was meeting the undercover agent for a pimping purpose. Because
13 Statement 11 is explicitly about the charges that were pending at the time of the
14 recording *and* because it is incriminating with respect to the pimping charges, this
15 statement should be suppressed under the Court's order.

16
17 • **Statement 12 (Government Excerpts (Dkt. No. 959-3) at 35:13-37:2):**

18 The government concedes that a jury could interpret this excerpt to be about Mr.
19 Young's girlfriend, Taylor Norry and how she earns money. Opp. (Dkt. No. 1076) at 7:8-
20 12. Again, the government has previously claimed that Ms. Norry worked as a
21 prostitute for Mr. Young. Dkt. No. 738 at 10:2-4 and 18:22 (describing Mr. Young's
22 girlfriend as his "prostitute")). Now, to avoid exclusion under the Court's order, the
23 government asserts that Ms. Norry earned her money legally through stripping. The
24 government's own arguments demonstrate that a reasonable juror could interpret this
25 statement to be about pimping. It should be excluded.

26 • **Statement 14 (Government Excerpts (Dkt. No. 959-3) at 45:13-53:22):**

1 This excerpt contains multiple references to activity that a juror could believe
2 involves pimping. Indeed, in its earlier filings the government described these same
3 remarks as depicting Mr. Young as “annoyed that the girlfriend/prostitute would expose
4 him for someone who could only pay forty or fifty dollars.” Dkt. No. 738 at 10:6-8.
5 Statement 14 also includes other references that a jury could find relate to pimping,
6 including a reference to a “bitch with the good hair” who “was getting 20.” Under the
7 government’s own interpretation, such statements are incriminating with respect to the
8 pending pimping charges and should be excluded.

9
10 **B. Statements regarding Mr. Young’s alleged membership in the CDP are**
11 **incriminating with respect to the pimping charges and should be**
suppressed on those grounds.

12 Although Mr. Young has never stated that he is a member of a CDP gang, the
13 government has made clear that it intends to convince a jury that Mr. Young was such a
14 member and that his role in the “gang” was to act as a pimp and share the proceeds
15 with his alleged fellow members. The criminal complaint in Mr. Young’s then-pending
16 pimping case specifically cites Mr. Young’s alleged membership in the CDP as tied to
17 the pimping charges. Criminal Complaint, *United States v. Young*, No. 13-cr-00229-
18 EMC, Dkt. No. 1 at ¶12. Two of the overt acts alleged against Mr. Young in support of
19 the RICO charges are attempts to entice an individual into prostitution. Second
20 Superseding Indictment (Dkt. No. 139) at ¶17b and ¶ 17dd. The Court’s prior ruling on
21 the recorded statements acknowledged the reality that the government’s pimping
22 allegations are intertwined with the government’s RICO allegations against Mr. Young,
23 as “the Second Superseding Indictment accuses CDP and its ‘members and associates’
24 of ‘[p]romoting and enhancing [CDP] and the activities of its members and associates,
25 including . . . pimping.’” Dkt. No. 139 ¶ 19.

1 In light of the Court's ruling, the government now asserts that the two allegations
2 are distinct and that Mr. Young's alleged membership in CDP is unrelated to the
3 pimping charges. Again, the government's argument here belies its earlier assertions—
4 the government claims that Mr. Young's role in CDP was a pimp. Because the
5 government's pimping allegations against Mr. Young are intertwined with its gang
6 allegations, any of Mr. Young's illegally recorded statements that reference
7 membership in the CDP should be excluded under the Court's prior order as they are
8 incriminating with respect to the pimping charges. See Motion (Dkt. No. 959) at 3:6-4:2
9 (citing specific statements that fall in this category).

10 **C. Mr. Young's general statements about the strength of the government's**
11 **case against him should be excluded as they are incriminating with respect**
12 **to the then-pending pimping charges.**

13 The government also attempts to reframe Mr. Young's conversation with its
14 informant as relating only to the later-charged crimes. The Court should reject the
15 government's attempts. The reality is that Mr. Young was in the federal courthouse on
16 June 18, 2014 for a hearing in his pending pimping case. There can be no question that
17 the government's case against Mr. Young was at the forefront of his mind during his
18 discussion with the government's informant. Thus there is no way to parse whether Mr.
19 Young's general statements about the strength of the government's case against him
20 relate to crimes other than pimping. Two examples below examples demonstrate this
21 point:

22 **• Statement 1 (Government Excerpts (Dkt. No. 959-3) at 2:23-25)**

23 In this statement the government's informant prods Mr. Young, "when you be
24 talkin' to your girl do you be tell her to be stuff like 'watchin' our movements,' and -" Mr.
25 Young replies, "Yeah, yeah, yeah everything, she cool. There ain't nothing going on."
26 As discussed above, the government has repeatedly insisted that Mr. Young's girlfriend
27 acted as a prostitute for him. Under the government's own theory, evidence that shows

1 Mr. Young was engaging in pimping with other women would make it more likely for a
2 jury to find that Mr. Young engaged in pimping in the charged offense. Thus, Mr.
3 Young's statement that his girlfriend is "cool" could clearly be read to reference the
4 pimping charges. This statement should be excluded.

5 • **Statement 3 (Government Excerpts (Dkt. No. 959-3) at 3:18-5:9)**

6 Here, Mr. Young is quoted as saying, "Dude I'm just sayin', there's nobody to put
7 me nowhere around nothin'. They don't have no witnesses, sayin' nothin' about me.
8 Anybody else, I don't give fuck what they got –." Mr. Young and the informant then go
9 on to discuss whether the "weed guy" ever saw Mr. Young with a "a group of bitches."
10 Again, these statements are incriminating with respect to the pimping charges as the
11 jury may infer from Mr. Young's statements about the government's lack of evidence
12 against him that such evidence in fact exists and would have been presented to the jury
13 had Mr. Young not successfully covered his trail.

14 In short, to choose to interpret Mr. Young's general statements as relating only to
15 his not-yet-charged case, rather than the case for which he was appearing in court that
16 very day ignores reality. Mr. Young's general statements about the government's case
17 and his ability to avoid detection are incriminating with respect to the pimping charges
18 and should be excluded. See Motion (Dkt. No. 959) at 4:3-20.

19 **D. Mr. Young will ask the Court to exclude the remaining statements the**
20 **government seeks to introduce as inadmissible under Rules 404(b) and**
21 **403.**

22 The Court asked Mr. Young to bring this motion to identify statements the
23 government seeks to introduce that violate the Court's prior order on Mr. Young's
24 *Massiah* motion. Dkt. No. 895 at 13:22-28. As Mr. Young's opening motion indicates,
25 Mr. Young also objects to some of the recorded statements on Rule 404(b) and 403
26 grounds. Given the overlap of Mr. Young's objections with his objections to other
27 evidence and the objections of Mr. Young's co-defendants, those arguments should be

1 heard together at the time the other motions *in limine* are heard, to allow the Court and
2 the parties the benefit of full briefing and oral argument.

3 **CONCLUSION**

4 This Court has previously held that the government violated Mr. Young's right to
5 counsel when it recorded his statements on June 18, 2014. Dkt. No. 895. The
6 government cannot now salvage its illegally obtained evidence through self-serving
7 claims that the statements it seeks to introduce relate only to the yet-to-be charged
8 conduct. Any statement that incriminates Mr. Young with respect to the pimping
9 charges must be excluded. The government chose the manner of gathering its
10 evidence and must live with the consequences. Dkt. No. 475 at 2:23-3:1.

11
12 Dated: November 3, 2016²

Respectfully Submitted,

13 /s/

14 _____
15 Ismail Ramsey
16 Amy Craig
17 Ramsey & Ehrlich LLP
18 Counsel to Jaquain Young

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27 ² The government requested an additional six days to file its opposition brief and in return
28 offered Mr. Young "the same amount of extra time to respond."